

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

KIM EDWARD ROGERS,

Plaintiff,

v.

KATHERINE LESTER, et al.,

Defendants.

No. 2:22-cv-00914-TLN-AC

ORDER

On February 27, 2023, the Ninth Circuit referred the matter to this Court for the limited purpose of determining whether Plaintiff's *in forma pauperis* ("IFP") status should continue on appeal or whether the appeal is frivolous or taken in bad faith. (ECF No. 50 (citing 28 U.S.C. § 1915(a)(3); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002)).)

"An appeal may not be taken [IFP] if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). "The test for allowing an appeal [IFP] is easily met . . . [t]he good faith requirement is satisfied if the [appellant] seeks review of any issue that is 'not frivolous.'" *Gardner v. Pogue*, 558 F.2d 548, 550–51 (9th Cir. 1977) (quoting *Coppedge v. U.S.*, 369 U.S. 438 445 (1962)); *see also Hooker*, 302 F.3d at 1092 (noting that an appeal is taken in "good faith" if it seeks review of "non-frivolous" issues and holding that if at least one issue or claim is non-frivolous, the appeal must proceed IFP as a whole). An action is frivolous "where it

1 lacks an arguable basis in either law or fact.” *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). In
2 other words, the term “frivolous,” as used in § 1915 and when applied to a complaint, “embraces
3 not only the inarguable legal conclusion, but also the fanciful factual allegation.” *Id.*

4 On January 24, 2023, the magistrate judge issued findings and recommendations. (ECF
5 No. 39.) The magistrate judge recommended the case be dismissed for failure to prosecute in
6 light of Plaintiff’s refusal to comply with court orders and failure to submit to entrance of a case
7 schedule. (*Id.* at 6.) This Court reviewed the relevant filings and adopted the findings and
8 recommendations in full and dismissed the action on February 8, 2023. (ECF No. 42.)

9 Based on the record before it, the Court cannot conceive of any valid grounds upon which
10 an appeal can be based. The Court therefore finds that Plaintiff’s appeal taken from its February
11 8, 2023 Order is frivolous and not taken in good faith. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App.
12 P. 24(a)(3)(A); *Hooker*, 302 F.3d at 1092; *Neitzke*, 490 U.S. at 325. Plaintiff’s IFP status on
13 appeal should therefore be revoked.

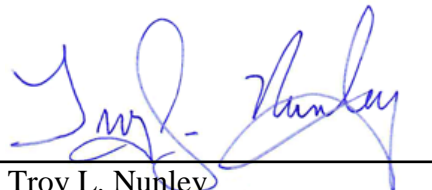
14 Accordingly, IT IS HEREBY ORDERED that:

- 15 1. Plaintiff’s *in forma pauperis* status on appeal is hereby REVOKED; and
- 16 2. The Clerk of the Court is directed to serve this Order on the Ninth Circuit Court of
17 Appeals in Case No. 23-15193.

18 IT IS SO ORDERED.

19 **DATE: March 2, 2023**

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Troy L. Nunley
United States District Judge